

Rule 3. Ex Parte Orders**Rule 3.01 Notice**

In any application for ex parte relief, the court may require a demonstration or explanation of the efforts made to notify affected parties, or the reasons why such efforts were not made. The reasons supporting ex parte relief should be recited in the order.

Rule 3.02 Prior Application

Before an ex parte order is issued, an affidavit shall be submitted with the application showing:

- (1) No prior applications for the relief requested or for a similar order have been made; or,
- (2) The court and judge to whom the prior application was made; the result of the prior application; and what new facts are presented with the current application.

Failure to comply with this rule may result in vacation of any order entered.

Task Force Comment - 1991 Adoption

Rule 3.01 is new, although it codifies the practice of the vast majority of judges.

Rule 3.02 is derived from Rule 10 of the Code of Rules for the District Courts. This rule applies in all trial court proceedings, including criminal actions. The Minnesota Supreme Court Advisory Committee on Criminal Procedure joins the Task Force in recommending that this rule apply in all trial court proceedings.

The review of the efforts made to provide notice is an integral part of permitting ex parte relief to be granted. The rule does not specify what showing must be made and does not state how it is to be made because the Task Force recognizes that a wide variety of circumstances apply to the seeking and obtaining of ex parte orders. In some circumstances, there may be proper reasons to justify ex parte relief even if notice could be given, and in those limited instances, a showing of those reasons should be made and reviewed by the court. The more common situation will involve description of the efforts made to give notice. The court may require the information in written or affidavit form, may take oral testimony, or may base the decision on the statements of counsel, either in person or by telephone. The Task Force also believes that if notice to affected parties is deemed unnecessary, the order should state the facts supporting ex parte relief without notice.